

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Orkin, Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Orkin, Inc., a California Corporation, and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Orkin, Inc. owned the real property located at or about 3501 Homestead Rd, Santa Clara, California, upon which the business "Texaco" operates, in September 2020.

1 3. Defendant Orkin, Inc. owns the real property located at or about 3501
2 Homestead Rd, Santa Clara, California, upon which the business “Texaco”
3 operates, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California’s Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to Texaco (“Gas Station”) in September 2020 with the
28 intention to avail himself of its goods or services motivated in part to

1 determine if the defendants comply with the disability access laws.

2 9. The Gas Station is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
5 to provide wheelchair accessible sales counters in conformance with the ADA
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. The Gas Station provides sales counters to its customers but fails to
8 provide wheelchair accessible sales counters.

9 12. A problem that plaintiff encountered was that the sales counter at the
10 Gas Station store was too high and there was no lowered portion of the sales
11 counter suitable for wheelchair users.

12 13. Plaintiff believes that there are other features of the sales counters that
13 likely fail to comply with the ADA Standards and seeks to have fully compliant
14 sales counters available for wheelchair users.

15 14. On information and belief the defendants currently fail to provide
16 wheelchair accessible sales counters.

17 15. Additionally, on the date of the plaintiff's visit, the defendants failed to
18 provide wheelchair accessible door hardware in conformance with the ADA
19 Standards as it relates to wheelchair users like the plaintiff.

20 16. The Gas Station provides door hardware to its customers but fails to
21 provide wheelchair accessible door hardware.

22 17. A problem that plaintiff encountered is that the entrance door hardware
23 at the Gas Station store had a panel style handle that required tight grasping to
24 operate.

25 18. Plaintiff believes that there are other features of the door hardware that
26 likely fail to comply with the ADA Standards and seeks to have fully compliant
27 door hardware available for wheelchair users.

28 19. On information and belief the defendants currently fail to provide

1 wheelchair accessible door hardware.

2 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
3 personally encountered these barriers.

4 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
5 wheelchair accessible facilities. By failing to provide accessible facilities, the
6 defendants denied the plaintiff full and equal access.

7 22. The failure to provide accessible facilities created difficulty and
8 discomfort for the Plaintiff.

9 23. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 24. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 25. Plaintiff will return to the Gas Station to avail himself of its goods or
19 services and to determine compliance with the disability access laws once it is
20 represented to him that the Gas Station and its facilities are accessible.
21 Plaintiff is currently deterred from doing so because of his knowledge of the
22 existing barriers and his uncertainty about the existence of yet other barriers
23 on the site. If the barriers are not removed, the plaintiff will face unlawful and
24 discriminatory barriers again.

25 26. Given the obvious and blatant nature of the barriers and violations
26 alleged herein, the plaintiff alleges, on information and belief, that there are
27 other violations and barriers on the site that relate to his disability. Plaintiff will
28 amend the complaint, to provide proper notice regarding the scope of this

lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities,

including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides facilities such as sales or transaction counters, it must provide accessible sales or transaction counters.

30. Here, accessible sales or transaction counters have not been provided in conformance with the ADA Standards.

31. When a business provides facilities such as door hardware, it must provide accessible door hardware.

32. Here, accessible door hardware has not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,

1 that persons with disabilities are entitled to full and equal accommodations,
2 advantages, facilities, privileges, or services in all business establishment of
3 every kind whatsoever within the jurisdiction of the State of California. Cal.
4 Civ. Code § 51(b).

5 37. The Unruh Act provides that a violation of the ADA is a violation of the
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 38. Defendants' acts and omissions, as herein alleged, have violated the
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
9 rights to full and equal use of the accommodations, advantages, facilities,
10 privileges, or services offered.

11 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
12 discomfort or embarrassment for the plaintiff, the defendants are also each
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
14 (c).)

15 40. Although the plaintiff encountered frustration and difficulty by facing
16 discriminatory barriers, even manifesting itself with minor and fleeting
17 physical symptoms, the plaintiff does not value this very modest physical
18 personal injury greater than the amount of the statutory damages.

19
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide
22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
25 plaintiff is not invoking section 55 of the California Civil Code and is not
26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act, which provides for actual
28 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: December 10, 2020 CENTER FOR DISABILITY ACCESS

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6 By:



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8
9 Amanda Seabock, Esq.
Attorney for plaintiff